

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

NEREIDA GONZALEZ,

Plaintiff,

– against –

THE CONTINENTAL CASUALTY COMPANY,

Defendant.

Index No.
15-CV-5024

ANSWER

Defendant Continental Casualty Company (incorrectly sued as “Boat U.S. Marine Insurance Programs Claims, Administrative Office, 888 South Pickett Street, Alexandria, VA 22304, The Continental Casualty Company”), by and through its attorneys, Nicoletti Hornig & Sweeney, upon information and belief, answers the Complaint as follows:

1. Denies each and every allegation contained in paragraph “1” of the Complaint, except admits that Continental Casualty Company is a foreign business corporation, incorporated under the laws of Illinois, with a principal place of business in Illinois and authorized to engage in an insurance business in the State of New York, and further admits that Boat America Corporation has a contract with Boat Owners Association of The United States (a non-stock association with no stockholders) to provide services to its members and does business under the name “BoatUS,” with an office located at 880 South Pickett Street, Alexandria, VA 22304.

2. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “2” of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “3” of the Complaint and refers all questions of law to the Court and all questions of fact to the trier thereof and specifically denies the cause(s) of the alleged damages.

4. Denies each and every allegation contained in paragraph “4” of the Complaint and refers all questions of law to the Court and all questions of fact to the trier thereof, except admits that Plaintiff filed a claim with Defendant’s marine insurance manager, BoatUS, for the damages alleged in the Complaint, which was assigned claim number 1313317, and that Defendant had issued to Plaintiff a policy of insurance, the terms and conditions of which are not set forth in the Complaint, which was assigned policy number 3510652-12, effective September 20, 2012, through September 20, 2013.

COUNT I

BREACH OF CONTRACT

5. Denies each and every allegation contained in paragraph “5” of the Complaint and refers all questions of law to the Court and all questions of fact to the trier thereof.

6. Denies each and every allegation contained in paragraph “6” of the Complaint and refers all questions of law to the Court and all questions of fact to the trier thereof.

7. The allegations of paragraph “7” of the Complaint set forth legal conclusions not requiring a response; to the extent construed otherwise, the allegations are denied.

8. Any and all enumerated paragraphs in the Complaint or allegations not herein responded to are denied.

AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE

9. The Complaint fails, in whole or in part, to state a cause of action upon which relief can be granted.

AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE

10. That some or all of the causes of action asserted in the Complaint are barred by the applicable statute of limitations and/or the equitable doctrine of laches.

AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE

11. The subject insurance policy provides, in relevant part:

Coverage A: Boat & Boating Equipment
Exclusions:

This insurance does not cover:

A. any loss caused directly or indirectly by wear and tear, gradual deterioration, mechanical or electrical breakdown, overheating, ice or freezing, galvanic action, rot, mold or mildew, corrosion, weathering, marring, scratching, denting, vermin, animals or marine life; however, we will cover immediate consequential property damage resulting from any fire, explosion, sinking, demasting, collision or stranding;

12. The Plaintiff's vessel was inspected by Anthony L. Fazio, an accredited marine surveyor, who concluded that the piston failure was the result of, *inter alia*, mechanical failure.

13. The Plaintiff's vessel was further inspected by Captain John N. Lowe, an accredited marine surveyor, who concluded that the piston failure was the result of, *inter alia*, wear and tear without evidence of propeller entanglement.

14. Based on the foregoing, Plaintiff's losses and damages are excluded under the terms and conditions of the subject insurance policy.

AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE

15. The answering Defendant reserves its right to assert any and all additional defenses as may be revealed by further investigation and discovery.

Dated: September 2, 2015
New York, New York

Respectfully submitted,

NICOLETTI HORNIG & SWEENEY
Attorneys for Defendant
Continental Casualty Company

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